



CITY OF SANTA CLARA

REQUEST FOR PROPOSAL FOR PROFESSIONAL SERVICES

Fireworks Procurement, Production & Management Services

PROPOSAL SUBMITTAL DEADLINE:

DATE: February 20, 2015
TIME: 3:00 P.M.
LOCATION: 1500 Warburton Avenue; Santa Clara, CA 95050

PRE-PROPOSAL MEETING: Friday, February 13, 2015 (Mission College Softball Fields)

Submit to:

James Teixeira
Director of Parks & Recreation
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
PHONE: (408) 615-2260
FAX: (408) 260-9719
EMAIL: jteixeira@santaclaraca.gov

REQUEST FOR PROPOSAL FOR PROFESSIONAL SERVICES

TITLE: Fireworks Procurement, Production & Management Services

1. INTRODUCTION

As part of the City of Santa Clara's July 2014 Council strategic planning process, the Council adopted an objective to develop plans for City-sponsored community events leading up to Super Bowl 50. The City is developing plans for a series of events to be held in Santa Clara leading up to the Super Bowl, that have three goals: 1) to engage the local community and to provide opportunities for Santa Clara residents and visitors to celebrate the Super Bowl, 2) to market Santa Clara as a destination, and 3) to raise money for civic related social causes.

The City of Santa Clara seeks an experienced fireworks production company to provide Fireworks, Coordination, and Production services for the "Fireworks" in Santa Clara as outlined below and further described in Attachment A. Scope of Services.

The City anticipates that a fireworks show and/or pyrotechnics may be included in one or more of the proposed Super Community events. The fireworks show(s) will: (a) coordinate start with the event production team; (b) provide a negotiated/approved 23-25 minute fireworks show including a variety of shell counts, sizes and pyrotechnic entertainment effects; (c) require pre-event, event and post-event production coordination with various federal, state and local public safety agencies and others, including but not limited to the Santa Clara Parks & Recreation Department, Santa Clara Fire Department (Fire Marshal) Santa Clara Police Department, and Mission College (site owner); (d) secure required permits well in advance of the event(s); e) and establish a safe firing zone within a secured perimeter ensuring high levels of safety, security and limited access; (f) provide an experienced/certified/security-screened firing team; and (g) provide post event pyro-technic clean up and return firing site(s) to original condition.

Events and Services to include in proposal:

- 1) **Super Community Celebration** (January 31, 2016). Fireworks Venue—Mission College Sports Complex ball field #3. Description—A celebratory concert and fireworks show. Show at approximately 6 pm.
- 2) **Super Community Celebration** (February 6, 2016). Venue—Santa Clara University sports field (Firing location-TBD). Description—A super fan village experience. Show at approximately 6 pm.
- 3) **Additional/alternate services.** Fireworks, pyrotechnical, laser light & special effect services.
 - a. **Super Tree Lighting** (December 4, 2015). Central Park 5-7:30 pm.
 - b. **Other:** Itemized description of products and services.

2. ATTACHMENTS

The attachments below are included with this Request for Proposals ("RFP"). The items identified with an asterisk (*) must be completed, signed by the appropriate representative of the company, and returned with the submittal.

Attachment A – Scope of Services*
Attachment B – Proposer’s Information Form*
Attachment C – Certification of Non-Discrimination*
Attachment D – Agreement for Services including Exhibits
Attachment E – Cost Proposal*

3. INSTRUCTIONS TO PROPOSERS

3.1. Pre-proposal Meeting.

There will be a non-mandatory Pre-proposal Meeting scheduled for Friday February 13, 2015 at 1:00 pm at Mission College Softball Field # 1 & 3. By responding to this RFP, you may be asked to provide additional information or invited to participate in an oral interview/presentation.

3.2. Examination of Proposal Documents.

The submission of a proposal shall be deemed a representation and certification by the Proposer that they:

- 3.2.1. Have carefully read and fully understand the information that was provided by the City to serve as the basis for submission of this proposal.
- 3.2.2. Have the capability to successfully undertake and complete the responsibilities and obligations of the proposal being submitted.
- 3.2.3. Represent that all information contained in the proposal is true and correct.
- 3.2.4. Did not, in any way, collude, conspire to agree, directly or indirectly, with any person, firm, corporation or other Proposer in regard to the amount, terms or conditions of this proposal.
- 3.2.5. Acknowledge that the City has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Proposer, and Proposer hereby grants the City permission to make these inquiries, and to provide any and all related documentation in a timely manner.

No request for modification of the proposal shall be considered after its submission on grounds that Proposer was not fully informed of any fact or condition.

3.3. Questions.

Any questions by the Proposer regarding this RFP or the project must be put in writing and received by the City no later than 3:00 p.m. on February 13, 2015. Correspondence shall be addressed to:

James Teixeira
Parks & Recreation Department
1500 Warburton Avenue
Santa Clara, CA 95050
(408) 615-2260 voice
(408) 260-9719 fax
jteixeira@santaclaraca.gov

The City shall not be responsible for nor be bound by any oral instructions, interpretations or explanations issued by the City or its representatives.

Responses from the City to questions by any Proposer will be communicated in writing to all recipients of this RFP. Questions received after the date and time stated above will not be accepted and will be returned to senders without response.

3.4. Addenda.

Any addenda issued by City shall be in writing, shall become a part of this RFP, and shall be acknowledged and responded to by Proposer.

3.5. Submission of Proposals.

All proposals shall be submitted to:

City of Santa Clara
Parks & Recreation Department
Attention: James Teixeira
1500 Warburton Avenue
Santa Clara, CA 95050

Please note that faxes, electronic submissions, or any media other than hard copies are not acceptable.

Proposals must be delivered no later than 3:00 p.m. on February 20, 2015. All proposals received after that time will be considered non-responsive and returned to the Proposer unopened.

The Proposer shall submit five (5) copies of its proposal in a sealed envelope, including one (1) original, clearly marked "Original," (Not as a watermark!) addressed as noted above, bearing the Proposer's name and address clearly marked, **"Proposal for Fireworks Procurement, Production & Management Services."**

3.6. Withdrawal of Proposals.

A Proposer may withdraw its proposal at any time before the expiration of the time for submission of proposals as provided in the RFP by delivering a written request for withdrawal signed by, or on behalf of, the Proposer.

4. RIGHTS OF THE CITY OF SANTA CLARA

This RFP does not commit the City to enter into a contract, nor does it obligate the City to pay for any costs incurred in preparation and submission of proposals or in anticipation of a contract. The City reserves the right to:

- Make the selection based on its sole discretion;
- Reject any and all proposals;
- Issue subsequent Requests for Proposals;
- Postpone opening proposals for its own convenience;
- Remedy errors in the Request for Proposals process;
- Approve or disapprove the use of particular sub-consultants;
- Negotiate with any, all or none of the Proposers;
- Accept other than the lowest offer;

- Waive informalities and irregularities in the Proposals; and/or
- Enter into an agreement with another Proposer in the event the originally selected Proposer defaults or fails to execute an agreement with the City.

An agreement shall not be binding or valid with the City unless and until it is approved by the City Council, if so required, and executed by authorized representatives of the City and of the Proposer.

5. RFP TIMELINE

The RFP Timeline is as follows:

| | |
|---|--|
| RFP Issued | February 9, 2015 |
| Deadline for questions, clarifications | February 13, 2015; 3 p.m. |
| Pre-Proposal Conference (Mission College-Ball fields) | February 13, 2015 1:00 pm |
| Proposals must be submitted by | February 20, 2015; 3 p.m. |
| City selects successful proposal | February 23-27, 2015 |
| City Council approval of successful proposal, award of contract | Next available Council Meeting in March 2015 |

The City reserves the right to add, remove or combine steps in the timeline, and/or compress or extend the timeline as the City, in its sole discretion, sees fit.

6. INFORMATION TO BE SUBMITTED

These guidelines govern the format and content of the proposal and the approach to be used in its development and presentation. The intent of the RFP is to encourage responses that clearly communicate the Proposer's understanding of the City's requirements and its approach to successfully provide the products and/or services on time and within budget. Only that information which is essential to an understanding and evaluation of the proposal should be submitted. Items not related to the RFP and proposal, e.g., generalized brochures, marketing material, etc., will not be considered in the evaluation and should not be submitted.

All proposals shall address the following items, in the order listed and shall be numbered 1 through 8 in the proposal document. Please include a Table of Contents before the Chapters.

Table of Contents.

Chapter 1 – Proposal Summary. (2 pages maximum)

(A) Summary—Discuss your understanding of the City's fireworks, pyrotechnics, & special effect's needs and the highlights, key features and distinguishing points of your Proposal to address the needs. (B) Contact List—Include a "Contact List" naming the Proposer's key individuals assigned to the planning, coordination, production, firing team and management, and provide their complete contact information and how best to communicate with them (i.e. phone, email).

Chapter 2 – Profile of the Proposing Firm(s). (2 pages maximum)

This Chapter shall provide a brief history and description of your firm, including: (A) the firm's name, address, phone number, email address and primary contact person; (B) a brief history of the firm, including size, location of the team that would manage the event, and areas of licensing, training and specialization; (C) discussion of the firm's capability, resources to successfully produce the fireworks shows, and financial stability. (D) Please indicate specifically any local expertise that you believe would be particularly relevant. (E) Additionally, include a listing of any claim, lawsuit or litigation and the result of that action resulting from (i) any public project undertaken by the Proposer either as a contractor or subcontractor or by its subcontractors where litigation is still pending or has occurred within the last five years, or (ii) any type of project where claims or settlements were paid by the consultant or its insurers within the last five (5) years. (F) Indicate any accidents that may have occurred, how the investigation was handled, the issues involved, and the outcome of the accident, investigation and corrective actions taken.

Chapter 3 – Qualifications of the Firm & Project Staffing. (3 pages maximum)

This Chapter shall identify and provide a detailed resume of qualifications and experience, including length of time with your firm, for (A) the individual within your firm who will have overall management responsibility for the Fireworks shows and will be the primary contact for all communication and interaction with the City of Santa Clara; and, (B) the names, qualifications, experience, location and length of time with your organization of each individual who would work directly with the primary contact. (C) Please provide a one page organizational chart depicting each area of the fireworks production and whom will be responsible for coordinating that specific area with the City based on your experience with similar events (include ordering, delivery, permits, inspections, offloading, setup, wiring, firing, clean up etc., demobilization). (D) Please provide a list of five (5) references of clients with similar projects/events along with the names and telephone numbers of the contact persons.

Chapter 4 –Product Description, Work Plan or Proposal. (4 pages maximum)

This Chapter shall present a well-articulated proposed work plan that will meet the event requirements. Please propose a 23-30 minute show with detail of shell counts and varieties of effects as well as total counts for each entire show included for:

1. **Super Community Celebration—Fireworks** (January 31, 2016). Fireworks Venue—Mission College Sports Complex ball field #3. Description—A themed parade followed by a celebratory concert and fireworks show. Show at approximately 6 pm.
2. **Super Community Celebration—SCU** (February 6, 2016). Venue—Santa Clara University sports field (Firing location-TBD). Description—A super fan village experience. Show at approximately 6 pm.
3. **Additional/alternate services—(TBA)** Fireworks, pyrotechnical, laser light & special effect services.
 - a) **Super Tree Lighting** (December 4, 2015). Central Park 5-7:30 pm.
 - b) **Other:** Itemized description of products and services.

Be sure to describe the types of fireworks and effects, size of shell, maximum heights of shell, firing method(s), sound coordination capabilities, and any other necessary technical or safety requirements or information.

Chapter 5 – Project Schedule. (As many as needed, summarized by week)

This Chapter shall include a project timeline, summarized by month, week, and day of delivery, set up and day of event by hour for completing the work including the key milestones and deliverables. **There should be sufficient critical path and task details to understand what is required to be completed by when from procurement, permits, transportation, inspection, certifications, site security, etc.**

Chapter 6 – Special Expertise/Unique Services. (1 page maximum)

This Chapter shall describe any special expertise, unique services or products your firm has or can offer and how such expertise, services or products would be of benefit to the City. Please include specific descriptions of your experience with and ability to manage major firework shows, including relationships with local public safety (Fire, police, haz-mat, community relations), logistics, communication, etc..

Chapter 7 – Proposal Exceptions.

This Chapter shall discuss any exceptions or requested changes that Proposer has to the City's RFP conditions, requirements and City agreement. If there are no exceptions noted, it is assumed the Proposer will accept all conditions and requirements identified in Attachment D –“Agreement for Services.” Items not excepted will not be open to later negotiation.

Chapter 8 – Proposal Costs Sheet and Rates.

This Chapter shall include the proposed costs to provide the services desired by City. Include detailed cost and price information, plus a “not-to-exceed” amount, that would be contained in a potential agreement with the City. Attachment E, “Cost Proposal,” is included and the format should be used. The hourly rates may be used for pricing additional services outlined in the Scope of Work. The itemized cost of the project must include all anticipated costs including the total hours, hourly rates by staff classification, and other expenses such as travel, per diem, and reimbursable expenses, and the resulting all-inclusive, not to exceed fee for the project. The City of Santa Clara does not pay for services before it receives them. Therefore, do not propose contract terms that call for upfront payments or deposits.

7. CONTRACT TYPE AND METHOD OF PAYMENT

It is anticipated that the agreement resulting from this RFP, if awarded, will be an Agreement for Services. The method of payment to the successful Proposer shall be for services provided based on established rates for services (Weekly Rates, Monthly Rates) and completion of tasks with a maximum “not to exceed” fee as set by the Proposer in the proposal or as negotiated between the Proposer and the City as being the maximum cost to perform all work. This figure shall include direct costs and overhead, such as, but not limited to, materials, delivery, transportation, communications, and any subcontracted items of work.

Proposers shall be prepared to accept the terms and conditions of the Agreement, including Insurance Requirements in Attachment F. If a Proposer desires to take exception to the

Agreement, Proposer shall provide the following information in Chapter 7 of their submittal package:

- clearly identify each proposed change to the Agreement, including all relevant Attachments; and,
- furnish the reasons for each proposed change, as well as specific recommendations for alternative language.

The above factors will be taken into account in evaluating proposals. Proposals that take exceptions to the proposed Agreement may be determined by the City, at its sole discretion, to be unacceptable and no longer considered for award.

8. INSURANCE REQUIREMENTS

The selected Proposer(s), at Proposer's sole cost and expense and for the full term of the agreement or any extension thereof, shall obtain and maintain, at a minimum, all of the insurance requirements outlined in Attachment F. All policies, endorsements, certificates and/or binders shall be subject to the approval of the City of Santa Clara as to form and content. These requirements are subject to amendment or waiver, if so approved in writing by the City of Santa Clara. The selected Proposer agrees to provide the City with a copy of said policies, certificates and/or endorsement upon award of contract.

9. REVIEW AND SELECTION PROCESS - EVALUATION CRITERIA

City staff will evaluate the proposals provided in response to this RFP based on the following criteria:

- Quality, detail and completeness of proposal;
- Effectiveness of the services to be provided by the Proposer;
- The number and variety of shells and effects to be produced;
- Soundtrack or additional special effects to be included;
- Team assembled by Proposer to plan, produce and manage the Parade;
- Cost;
- Ability to articulate detailed critical path timeline and timeliness of tasks;
- Understanding of the Event, site(s) and constraints;
- Proposer's prior record of safety, performance and proven experience/customer satisfaction with similar events;
- Ability to deliver all elements on time, safely and within budget .

10. PUBLIC NATURE OF PROPOSAL MATERIAL

Responses to this RFP become the exclusive property of the City of Santa Clara. At such time as the City awards a contract, all proposals received in response to this RFP become a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are defined by the Proposer as business or trade secrets and plainly marked as "Confidential," "Trade Secret," or "Proprietary." The City shall not in any way be liable or responsible for the disclosure of any such proposal or portions thereof, if they are not plainly marked as "Confidential," "Trade Secret," or "Proprietary," or if disclosure, in the City's sole discretion, is required under the California Public Records Act as addressed below. Any proposal which contains language purporting to render all or significant portions of the proposal "Confidential," "Trade Secret," or "Proprietary" shall be regarded as non-responsive.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City of Santa Clara may determine, in its sole discretion, that the information that a Proposer submits is not a trade secret. If a request is made for information marked “Confidential,” “Trade Secret,” or “Proprietary,” the City shall provide the Proposer who submitted the information reasonable notice to allow the Proposer to seek protection from disclosure by a court of competent jurisdiction, at the Proposer's sole expense.

11. COLLUSION

By submitting a proposal, each Proposer represents and warrants that its proposal is genuine and made in the interest of or on behalf of any person not named therein; that the Proposer has not directly induced or solicited any other person to submit a sham proposal or any other person to refrain from submitting a proposal; and that the Proposer has not in any manner sought collusion to secure any improper advantage over any other person submitting a proposal.

12. DISQUALIFICATION

Factors, such as, but not limited to, any of the following, may disqualify a proposal without further consideration:

- Evidence of collusion, directly or indirectly, among Proposers in regard to the amount, terms or conditions of this proposal;
- Any attempt to improperly influence any member of the evaluation team;
- Existence of any lawsuit, unresolved contractual claim or dispute between Proposer and the City;
- Evidence of incorrect information submitted as part of the proposal;
- Evidence of Proposer's inability to successfully complete the responsibilities and obligations of the proposal; and
- Proposer's default under any previous agreement with the City.

13. NON-CONFORMING PROPOSAL

A proposal shall be prepared and submitted in accordance with the provisions of these RFP instructions and specifications. Any alteration, omission, addition, variance, or limitation of, from or to a proposal may be sufficient grounds for non-acceptance of the proposal, at the sole discretion of the City.

14. GRATUITIES

No person shall offer, give or agree to give any City employee any gratuity, discount or offer of employment in connection with the award of contract by the City. No City employee shall solicit, demand, accept or agree to accept from any other person a gratuity, discount or offer of employment in connection with a City contract.

15. FIRMS OR PERSONS NOT ELIGIBLE TO SUBMIT A PROPOSAL

In order to avoid any conflict of interest or perception of a conflict of interest, Proposer(s) selected to provide professional services under this RFP will be subject to the following requirements:

15.1. The consultant or other entity who works on the procurement will be precluded from submitting proposals or bids as a prime contractor or subcontractor.

15.2. The consultant or any other entity who participated in the procurement shall not have a financial, ownership or other interest in any potential Proposer.

ATTACHMENT A

Scope of Services

Background. As part of the City of Santa Clara's July 2014 Council strategic planning process, the Council adopted an objective to develop plans for City-sponsored community events leading up to Super Bowl 50. The City is developing plans for a series of events to be held in Santa Clara leading up to the Super Bowl, that have three goals: 1) to engage the local community and to provide opportunities for Santa Clara residents and visitors to celebrate the Super Bowl, 2) to market Santa Clara as a destination, and 3) to raise money for civic related social causes.

Services Required. The City of Santa Clara seeks an experienced fireworks production company (Fireworks Producer) to provide Fireworks, Coordination, and Production services in Santa Clara as outlined below.

The City anticipates that a fireworks show and/or pyrotechnics may be included in one or more of the proposed Super Community events. The fireworks show(s) will: (a) coordinate start with the event production team; (b) provide a negotiated/approved 23-25 minute fireworks show including a variety of shell counts, sizes and pyrotechnic entertainment effects; (c) require pre-event, event and post-event production coordination with various federal, state and local public safety agencies and others, including but not limited to the Santa Clara Parks & Recreation Department, Santa Clara Fire Department (Fire Marshal) Santa Clara Police Department, and Mission College (site owner); (d) secure required permits well in advance of the event(s); (e) and establish a safe firing zone within a secured perimeter ensuring high levels of safety, security and limited access; (f) provide an experienced/certified/security-screened firing team; and (g) provide post event pyro-technic clean up and return firing site(s) to original condition.

Events and Services to include in proposal:

- 1) **Super Community Celebration—Fireworks** (January 31, 2016). Fireworks Venue—Mission College Sports Complex ball field #3. Description—A themed parade followed by a celebratory concert and fireworks show. Show at approximately 6 pm.
- 2) **Super Community Celebration—SCU** (February 6, 2016). Venue—Santa Clara University sports field (Firing location-TBD). Description—A super fan village experience. Show at approximately 6 pm.
- 3) **Additional/alternate services—(TBA)** Fireworks, pyrotechnical, laser light & special effect services.
 - a. **Super Tree Lighting** (December 4, 2015). Central Park 5-7:30 pm.
 - b. **Other:** Itemized description of products and services.

Team Meetings: The Fireworks Producer will meet periodically with City's event team and partners and as needed with stakeholders and Council. The City has formed event teams comprised of representatives from City Departments and other community stakeholders as applicable. Event teams have been meeting since July 2014 to develop the event concepts and budgets as described below. In addition, a Planning Committee comprised of each event team lead has been meeting monthly for overall coordination. The Fireworks Producer will work with event teams and the Planning Committee to develop and implement work plans.

ATTACHMENT B
Proposer's Information Form

PROPOSER (please print): _____

Name: _____

Address: _____

Telephone: _____

FAX: _____

Contact person, title, telephone number, email address and fax number: _____

Proposer, if selected, intends to carry on the business as (check one)

- ☐ Individual
- ☐ Joint Venture
- ☐ Partnership
- ☐ Corporation

When incorporated? _____

In what state? _____

When authorized to do business in California? _____

☐ Other (explain): _____

ADDENDA

To assure that all Proposers have received each addendum, check the appropriate box(es) below. Failure to acknowledge receipt of an addendum/addenda may be considered an irregularity in the Proposal:

Addendum number(s) received:

- ☐ 1
- ☐ 2
- ☐ 3
- ☐ 4
- ☐ 5
- ☐ 6

Or,

☐ _____ No Addendum/Addenda Were Received (check and initial).

PROPOSER'S SIGNATURE

No proposal shall be accepted which has not been signed in ink in the appropriate space below:

By signing below, the submission of a proposal shall be deemed a representation and certification by the Proposer that they have investigated all aspects of the RFP, that they are aware of the applicable facts pertaining to the RFP process, its procedures and requirements, and they have read and understand the RFP. No request for modification of the proposal shall be considered after its submission on the grounds that the Proposer was not fully informed as to any fact or condition.

**(1) If Proposer is *INDIVIDUAL*,
sign here:**

Date: _____

Proposer's Signature

Proposer's typed name and title

**(2) If Proposer is *PARTNERSHIP* or
JOINT VENTURE, at least (2) Partners
or each of the Joint Venturers
shall sign here:**

Partnership or Joint Venture Name
(type or print)

Date: _____

Member of the Partnership or Joint Venture
signature

Date: _____

Member of the Partnership or Joint Venture
signature

**(3) If Proposer is a *CORPORATION*,
the duly authorized officer(s) shall
sign as follows:**

The undersigned certify that they are respectively:____
(Title) and _____(Title)
of the corporation named below; that they are
designated to sign the Proposal Cost Form by
resolution (attach a certified copy, with corporate
seal, if applicable, notarized as to its authenticity or
Secretary's certificate of authorization) for and on
behalf of the below named CORPORATION, and
that they are authorized to execute same for and on
behalf of said CORPORATION.

Corporation Name (type or print)

By:_____
Title:_____
Dated:_____

By:_____
Title:_____
Dated:_____

ATTACHMENT C
Certification of Nondiscrimination

As suppliers of goods or services to the City of Santa Clara, the firm and individuals listed below certify that they do not discriminate in employment of any person because of race, color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, or familial status; and that they are in compliance with all Federal, State and local laws, directives and executive orders regarding nondiscrimination in employment.

**(1) If Proposer is *INDIVIDUAL*,
sign here:**

Date: _____

Proposer's Signature

Proposer's typed name and title

**(2) If Proposer is *PARTNERSHIP* or
JOINT VENTURE, at least (2) Partners
or each of the Joint Venturers
shall sign here:**

Partnership or Joint Venture Name
(type or print)

Date: _____

Member of the Partnership or Joint Venture
signature

Date: _____

Member of the Partnership or Joint Venture
signature

**(3) If Proposer is a *CORPORATION*,
the duly authorized officer(s) shall
sign as follows:**

The undersigned certify that they are respectively:____
(Title) and _____(Title)
of the corporation named below; that they are
designated to sign the Proposal Cost Form by
resolution (attach a certified copy, with corporate
seal, if applicable, notarized as to its authenticity or
Secretary's certificate of authorization) for and on
behalf of the below named CORPORATION, and
that they are authorized to execute same for and on
behalf of said CORPORATION.

Corporation Name (type or print)

By:_____
Title:_____
Dated:_____

By:_____
Title:_____
Dated:_____

ATTACHMENT D

Agreement for Services

EBIX Insurance No. _____

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
*INSERT CONTRACTOR'S NAME**

PREAMBLE

This agreement for the performance of services ("Agreement") is by and between *insert Contractor's name, a [n] *choose one: a _____ (enter State name) corporation/partnership/individual, with its principal place of business located at *insert Contractor's address ("Contractor"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

City desires to secure professional services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services"; and

Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,

The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT PROVISIONS

EMPLOYMENT OF CONTRACTOR.

City hereby employs Contractor to perform services set forth in this Agreement. To accomplish that end, City may assign a Project Manager to personally direct the Services to be provided by Contractor and will notify Contractor in writing of City's choice. City shall pay for all such materials and services provided which are consistent with the terms of this Agreement.

SERVICES TO BE PROVIDED.

Except as specified in this Agreement, Contractor shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as "Services") to satisfactorily complete the work

required by City at his/her own risk and expense. Services to be provided to City are more fully described in Exhibit A entitled "SCOPE OF SERVICES." All of the exhibits referenced in this Agreement are attached and are incorporated by this reference.

COMMENCEMENT AND COMPLETION OF SERVICES.

Contractor shall begin providing the services under the requirements of this Agreement upon receipt of written Notice to Proceed from City. Such notice shall be deemed to have occurred three (3) calendar days after it has been deposited in the regular United States mail. Contractor shall complete the Services within the time limits set forth in the Scope of Services or as mutually determined in writing by the Parties.

When City determines that Contractor has satisfactorily completed the Services, City shall give Contractor written Notice of Final Acceptance. Upon receipt of such notice, Contractor shall not incur any further costs under this Agreement. Contractor may request this determination of completion be made when, in its opinion, the Services have been satisfactorily completed. If so requested by the contractor, City shall make this determination within fourteen (14) days of its receipt of such request.

QUALIFICATIONS OF CONTRACTOR - STANDARD OF WORKMANSHIP.

Contractor represents and maintains that it has the necessary expertise in the professional calling necessary to perform services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor's representations regarding its skills and knowledge. Contractor shall perform such services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

The plans, designs, specifications, estimates, calculations, reports and other documents furnished under Exhibit A shall be of a quality acceptable to City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well organized, that is technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by City for similar projects.

TERM OF AGREEMENT.

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date of this Agreement and terminate on ***insert end date**.

MONITORING OF SERVICES.

City may monitor the Services performed under this Agreement to determine whether Contractor's operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accord with applicable City, county, state, and federal requirements. If

any action of Contractor constitutes a breach, City may terminate this Agreement pursuant to the provisions described herein.

WARRANTY.

Contractor expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect, and shall conform to the specifications, requirements, and instructions upon which this Agreement is based. Contractor agrees to promptly replace or correct any incomplete, inaccurate, or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Contractor for the cost incurred by City.

PERFORMANCE OF SERVICES.

Contractor shall perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by City. Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it. Contractor will perform all Services in a safe manner and in accordance with all federal, state and local operation and safety regulations.

BUSINESS TAX LICENSE REQUIRED

Contractor must comply with Santa Clara City Code section 3.40.060, as that section may be amended from time to time or renumbered, which requires that any person who transacts or carries on any business in the City of Santa Clara pay business license tax to the City. A business tax certificate may be obtained by completing the Business Tax Affidavit Form and paying the applicable fee at the Santa Clara City Hall Municipal Services Division.

RESPONSIBILITY OF CONTRACTOR.

Contractor shall be responsible for the professional quality, technical accuracy and coordination of the Services furnished by it under this Agreement. Neither City's review, acceptance, nor payments for any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and Contractor shall be and remain liable to City in accordance with applicable law for all damages to City caused by Contractor negligent performance of any of the Services furnished under this Agreement.

Any acceptance by City of plans, specifications, construction contract documents, reports, diagrams, maps and other material prepared by Contractor shall not in any respect absolve Contractor from the responsibility Contractor has in accordance with customary standards of good professional practice in compliance with applicable federal, state, county, and/or municipal laws, ordinances, regulations, rules and orders.

COMPENSATION AND PAYMENT.

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and services rendered by Contractor at the rate per hour for labor and cost per unit for materials as outlined in Exhibit B, entitled "SCHEDULE OF FEES."

Contractor will bill City on a monthly basis for Services provided by Contractor during the preceding month, subject to verification by City. City will pay Contractor within thirty (30) days of City's receipt of invoice.

TERMINATION OF AGREEMENT.

Either Party may terminate this Agreement without cause by giving the other Party written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. After either Party terminates the Agreement, Contractor shall discontinue further services as of the effective date of termination, and City shall pay Contractor for all Services satisfactorily performed up to such date.

NO ASSIGNMENT OR SUBCONTRACTING OF AGREEMENT.

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Contractor shall not hire subcontractors without express written permission from City.

NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

INDEPENDENT CONTRACTOR.

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Contractor has full rights, however, to manage its employees in their performance of Services under this Agreement. Contractor is not authorized to bind City to any contracts or other obligations.

NO PLEDGING OF CITY'S CREDIT.

Under no circumstances shall Contractor have the authority or power to pledge the credit of City or incur any obligation in the name of City. Contractor shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Contractor under this Agreement.

CONFIDENTIALITY OF MATERIAL.

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

USE OF CITY NAME OR EMBLEM.

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

OWNERSHIP OF MATERIAL.

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR.

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for three (3) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

CORRECTION OF SERVICES.

Contractor agrees to correct any incomplete, inaccurate or defective Services at no further costs to City, when such defects are due to the negligence, errors or omissions of Contractor.

FAIR EMPLOYMENT.

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law.

HOLD HARMLESS/INDEMNIFICATION.

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which City shall become liable arising from Contractor's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the Services performed by Contractor pursuant to this Agreement.

INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall provide and maintain in full force and effect, at no cost to City insurance policies with respect to employees and vehicles assigned to the Performance of Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C.

AMENDMENTS.

This Agreement may be amended only with the written consent of both Parties.

INTEGRATED DOCUMENT.

This Agreement represents the entire agreement between City and Contractor. No other understanding, agreements, conversations, or otherwise, with any representative of City prior to execution of this Agreement shall affect or modify any of the terms or obligations of this Agreement. Any verbal agreement shall be considered unofficial information and is not binding upon City.

SEVERABILITY CLAUSE.

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

WAIVER.

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attention: [insert Dept. here]
1500 Warburton Avenue
Santa Clara, California 95050
or by facsimile at (408) ____ - ____

And to Contractor addressed as follows:

Name: _____
Address: _____
or by facsimile at (____) ____ - ____

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

CAPTIONS.

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

LAW GOVERNING CONTRACT AND VENUE.

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

DISPUTE RESOLUTION.

Unless otherwise mutually agreed to by the Parties, any controversies between Contractor and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.

The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.

The costs of mediation shall be borne by the Parties equally.

For any contract dispute, mediation under this section is a condition precedent to filing an action in any court. In the event of mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit through mediation only. In the event of litigation, the prevailing Party shall recover its reasonable costs of suit, expert's fees, and attorney's fees. If mediation does not resolve the dispute, the Parties agree that the matter shall be litigated in a court of law, and not subject to the arbitration provisions of the Public Contracts Code.

COMPLIANCE WITH ETHICAL STANDARDS.

Contractor shall:

Read Exhibit D, entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA"; and,

Execute Exhibit E, entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

1. AFFORDABLE CARE ACT OBLIGATIONS

To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

LIQUIDATED DAMAGES.

It is mutually agreed by Contractor and City that, in the event completion of the Services to be provided by the Contractor under this Agreement is delayed beyond *insert date, City will suffer damages and will incur other costs and expenses of a nature and amount which is difficult or impractical to determine. The Parties agree that by way of ascertaining and fixing the amount of damages, costs and expenses, and not by way of penalty, Contractor shall pay to City the sum of *spell out dollar amount (\$*insert numerical dollar amount) per day in liquidated damages for each and every calendar day such delay in completion of said Services continues beyond *insert date. In the event that said liquidated damages are not paid, Contractor agrees that City may deduct the amount of said unpaid damages from any money due or that may become due to Contractor under this Agreement.

CONFLICT OF INTERESTS.

This Agreement does not prevent either Party from entering into similar agreements with other parties. To prevent a conflict of interest, Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code Section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

2. PROGRESS SCHEDULE.

The Progress Schedule will be as set forth in the attached Exhibit F, entitled "MILESTONE SCHEDULE" if applicable.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA a chartered California municipal corporation

APPROVED AS TO FORM:

Dated: _____

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

***INSERT CONTRACTOR'S NAME**
*choose one: corporation/partnership/individual

Dated: _____

By: _____
(Signature of Person executing the Agreement on behalf of Contractor)
Name: _____
Title: _____
Local Address: _____

Email Address: _____
Telephone: () _____
Fax: () _____
"CONTRACTOR"

S:\Attorney\AGREEMENTS\Service\OVER \$50K SERVICE AGREEMENT FORM.doc

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
*INSERT CONTRACTOR'S NAME**

EXHIBIT A

SCOPE OF SERVICES

The Services to be performed for the City by the Contractor under this Agreement are more fully described in the Contractor's proposal entitled, "*insert name of proposal" dated *insert date of proposal, which is attached to this Exhibit A.

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
*INSERT CONTRACTOR'S NAME**

EXHIBIT B

FEE SCHEDULE

Consultant shall provide a schedule of rates and fees which includes all billing amounts and costs as follows (if applicable), such as :

[NOTE TO CITY DEPARTMENTS: This Exhibit "B" should contain a schedule of rates and fees which includes all billing amounts and costs as follows (if applicable), such as:

- Fee Schedule Effective Date;
- Hourly Billing Rates for Each Staff Position/level;
- Minimum Billing Hours;
- Charges for Equipment by Day/week/month;
- Travel Time and Costs;
- Per Diem Expenses;
- Expendable Material or New Parts Costs;
- Outside Services Costs; and,
- Overtime Costs.]

In no event shall the amount billed to City by Contractor for services under this Agreement exceed *spell out dollar amount (\$*insert numerical dollar amount), subject to budget appropriations.

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND**

***INSERT CONTRACTOR'S NAME**

EXHIBIT C

INSURANCE REQUIREMENTS

INSURANCE COVERAGE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the

Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. Cancellation.

- a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. **ADDITIONAL INSURANCE RELATED PROVISIONS**

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara [*insert City department name here]

P.O. 12010-S2

or 151 North Lyon Avenue

Hemet, CA 92546-8010

Hemet, CA 92543

Telephone number: 951-766-2280

Fax number: 770-325-0409

Email address: ctsantaclara@ebix.com

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

S:\Attorney\INSURANCE\CITY\EXHIBIT C-02 Contract over \$50,000 limited exposure.doc

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND**

***INSERT CONTRACTOR'S NAME**

EXHIBIT D

**ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN
AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA**

Termination of Agreement for Certain Acts.

- A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

If a Contractor¹ does any of the following:

Is convicted² of operating a business in violation of any Federal, State or local law or regulation;

Is convicted of a crime punishable as a felony involving dishonesty³;

Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;

Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,

Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

¹ For purposes of this Agreement, the word "Consultant" (whether a person or a legal entity) also refers to "Contractor" and means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

The City may also terminate this Agreement in the event any one or more of the following occurs:

The City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or,

If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to provide and maintain bonds and/or insurance policies required under this Agreement.

In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

⁵ Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND**

***INSERT CONTRACTOR'S NAME**

EXHIBIT E

AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit D. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of "Contractor" contained in Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said "Contractor" category [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

***INSERT CONTRACTOR'S NAME**

***choose one: a corporation/partnership/individual**

By: _____
Signature of Authorized Person or Representative

Name: _____

Title: _____

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

**AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND**

***INSERT CONTRACTOR'S NAME**

EXHIBIT F

MILESTONE SCHEDULE

(If Applicable)